

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TARA DEVITA,

Plaintiff,

-against-

PHILLIPS & MILLMAN, LLP, JEFFREY T. MILLMAN,  
ESQ., JOEL A. GROSSBARTH, ESQ., TOGNINO &  
GROSSBARTH, LLP. And DANIEL NATHAN  
KRAUSHAAR, ESQ.,

Defendants.

Case No.: 13-cv-5607 (LTS)

**JOEL A. GROSSBARTH,  
ESQ., and TOGNINO &  
GROSSBARTH, LLP  
ANSWER TO  
SECOND AMENDED  
COMPLAINT WITH  
CROSS-CLAIMS**

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Defendants, JOEL A. GROSSBARTH and TOGNINO & GROSSBARTH, LLP., by their  
attorneys, Kaufman Dolowich & Voluck, LLP, as and for their answer to the Second Amended  
Complaint, hereby responds, as follows:

**THE PARTIES**

1. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “1” of the Second Amended Complaint.
2. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “2” of the Second Amended Complaint.
3. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “3” of the Second Amended Complaint.
4. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “4” of the Second Amended Complaint.
5. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “5” of the Second Amended Complaint.

6. The Answering Defendants deny the allegations contained in Paragraph “6” of the Second Amended Complaint.

7. The Answering Defendants admit the allegations contained in Paragraph “7” of the Second Amended Complaint.

8. The Answering Defendants deny the allegations contained in Paragraph “8” of the Second Amended Complaint.

9. The Answering Defendants deny the allegations contained in Paragraph “9” of the Second Amended Complaint.

10. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “10” of the Second Amended Complaint.

11. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “11” of the Second Amended Complaint.

#### **JURISDICTION & VENUE**

12. The Answering Defendants deny allegations contained in Paragraph “12” of the Second Amended Complaint.

13. The Answering Defendants deny the allegations contained in Paragraph “13” of the Second Amended Complaint.

14. The Answering Defendants deny the allegations contained in Paragraph “14” of the Second Amended Complaint.

#### **FACTUAL BACKGROUND**

15. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “15” of the Second Amended Complaint.

16. The Answering Defendants deny the allegations contained in Paragraph “16” of the Second Amended Complaint.

17. The Answering Defendants deny the allegations contained in Paragraph “17” of the Second Amended Complaint.

18. The Answering Defendants admit the allegations contained in Paragraph “18” of the Second Amended Complaint.

19. The Answering Defendants admit the allegations contained in Paragraph “19” of the Second Amended Complaint.

20. The Answering Defendants deny the allegations contained in Paragraph “20” of the Second Amended Complaint.

21. The Answering Defendants deny the allegations contained in Paragraph “21” of the Second Amended Complaint.

22. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “22” of the Second Amended Complaint.

23. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “23” of the Second Amended Complaint.

24. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “24” of the Second Amended Complaint.

25. The Answering Defendants deny the allegations contained in Paragraph “25” of the Second Amended Complaint.

26. The Answering Defendants deny the allegations contained in Paragraph “26” of the Second Amended Complaint.

27. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “27” of the Second Amended Complaint.

28. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “28” of the Second Amended Complaint.

29. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “29” of the Second Amended Complaint.

30. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “30” of the Second Amended Complaint.

31. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “31” of the Second Amended Complaint.

32. The Answering Defendants deny the allegations contained in Paragraph “32” of the Second Amended Complaint.

33. The Answering Defendants deny the allegations contained in Paragraph “33” of the Second Amended Complaint.

34. The Answering Defendants deny the allegations contained in Paragraph “34” of the Second Amended Complaint.

35. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “35” of the Second Amended Complaint and refer the Court to the document referenced for the terms and wording contained therein.

36. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “36” of the Second Amended Complaint and refer the Court to the document referenced for the terms and wording contained therein.

37. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “37” of the Second Amended Complaint and refer the Court to the document referenced for the terms and wording contained therein.

38. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “38” of the Second Amended Complaint and refer the Court to the document referenced for the terms and wording contained therein.

39. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “39” of the Second Amended Complaint and refer the Court to the document referenced for the terms and wording contained therein.

40. The Answering Defendants deny the allegations contained in Paragraph “40” of the Second Amended Complaint.

41. The Answering Defendants neither admit nor deny the allegations contained in Paragraph “41” of the Second Amended Complaint and respectfully refers the Court to the document referenced therein for its contents and wording.

42. The Answering Defendants deny the allegations contained in Paragraph “42” of the Second Amended Complaint.

43. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “43” of the Second Amended Complaint.

44. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “44” of the Second Amended Complaint.

45. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “45” of the Verified Complaint.

46. The Answering Defendants deny the allegations contained in Paragraph “46” of the Second Amended Complaint.

47. The Answering Defendants deny knowledge and information sufficient to form a response to the allegations contained in Paragraph “47” of the Second Amended Complaint.

**AS AND FOR AN ANSWER TO THE  
FIRST CAUSE OF ACTION**

48. The Answering Defendants repeat each and every response to Plaintiff’s allegations contained in Paragraphs “1” through “47” as if fully set forth herein.

49. The Answering Defendants deny the allegations contained in Paragraph “49” of the Second Amended Complaint.

50. The Answering Defendants deny the allegations contained in Paragraph “50” of the Second Amended Complaint.

51. The Answering Defendants deny the allegations contained in Paragraph “51” of the Second Amended Complaint.

52. The Answering Defendants deny the allegations contained in Paragraph “52” of the Second Amended Complaint.

53. The Answering Defendants deny the allegations contained in Paragraph “53” of the Second Amended Complaint.

54. The Answering Defendants deny the allegations contained in Paragraph “54” of the Second Amended Complaint.

55. The Answering Defendants deny the allegations contained in Paragraph “55” of the Second Amended Complaint.

**AS AND FOR AN ANSWER TO THE  
SECOND CAUSE OF ACTION**

56. The Answering Defendants repeat each and every response to Plaintiff’s allegations contained in Paragraphs “1” through “55” as if fully set forth herein.

57. The Answering Defendants deny the allegations contained in Paragraph “57” of the Second Amended Complaint.

58. The Answering Defendants deny the allegations contained in Paragraph “58” of the Second Amended Complaint.

59. The Answering Defendants deny the allegations contained in Paragraph “59” of the Second Amended Complaint.

60. The Answering Defendants deny the allegations contained in Paragraph “60” of the Second Amended Complaint.

61. The Answering Defendants deny the allegations contained in Paragraph “61” of the Second Amended Complaint.

**AS AND FOR AN ANSWER TO THE  
THIRD CAUSE OF ACTION**

62. The Answering Defendants repeats each and every response to Plaintiff’s allegations contained in Paragraphs “1” through “61” as if fully set forth herein.

63. The Answering Defendants deny the allegations contained in Paragraph “63” of the Second Amended Complaint.

64. The Answering Defendants deny the allegations contained in Paragraph “64” of the Second Amended Complaint.

65. The Answering Defendants deny the allegations contained in Paragraph “65” of the Second Amended Complaint.

66. The Answering Defendants deny the allegations contained in Paragraph “66” of the Second Amended Complaint.

67. The Answering Defendants deny the allegations contained in Paragraph “67” of the Second Amended Complaint

**AS AND FOR AN ANSWER TO THE  
FOURTH CAUSE OF ACTION**

68. The Answering Defendants repeat each and every response to Plaintiff’s allegations contained in Paragraphs “1” through “67” as if fully set forth herein.

69. The Answering Defendants deny the allegations contained in Paragraph “69” of the Second Amended Complaint.

70. The Answering Defendants deny the allegations contained in Paragraph “70” of the Second Amended Complaint.

71. The Answering Defendants deny the allegations contained in Paragraph “71” of the Second Amended Complaint.

72. The Answering Defendants deny the allegations contained in Paragraph “72” of the Second Amended Complaint.

73. The Answering Defendants deny the allegations contained in Paragraph “73” of the Second Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

74. Whatever injuries and/or damages were sustained by Plaintiff, as alleged in the Second Amended Complaint, were in whole or in part the result of the Plaintiff’s own culpable conduct.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

75. If any damages were sustained by the Plaintiff as alleged in the Second Amended Complaint, which damages are expressly denied, all such damages have been caused and brought about in whole or in material part by the affirmative wrongdoing, negligence, want of care and other culpable conduct and/or comparative negligence of the Plaintiff and/or persons under the Plaintiff’s control, without similar acts of the Answering Defendants contributing thereto.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

76. Any damages sustained by the Plaintiff were a result of the acts or omissions of third persons or entities over whom the Answering Defendants exercised no control.



**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

77. If the Plaintiff has sustained injuries as alleged in her Second Amended Complaint, such injuries were aggravated, exacerbated and/or exaggerated by the Plaintiff's failure to use reasonable diligence in mitigation.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

78. Plaintiff's Second Amended Complaint fails to state a cause of action upon which relief can be granted.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

79. Plaintiff lacks standing to assert claim(s) against the Answering Defendants.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

80. Plaintiff's Second, Third, and Fourth Causes of Action are duplicative and subject to dismissal as such.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

81. If the Plaintiff should settle the instant action with a party other than the Answering Defendants, said Defendants is entitled to a set-off as against such settlement pursuant to General Obligations Law Section 15-108.

**AS AND FOR A CROSS- CLAIM FOR CONTRIBUTION AGAINST PHILLIPS AND  
MILLMAN LLP AND JEFFREY T. MILLMAN, ESQ.**

1. In the event that liability is found against the Answering Defendants, such liability being explicitly denied, then Answering Defendants shall be entitled to contribution

from defendants Phillips & Millman, LLP and Defendants Jeffrey T. Millman, Esq., for their proportionate share of liability.

**AS AND FOR A CROSS- CLAIM FOR COMMON LAW INDEMNIFICATION  
AGAINST PHILLIPS AND MILLMAN LLP AND JEFFREY T. MILLMAN, ESQ.**

2. In the event that liability is found against the Answering Defendants, such liability being explicitly denied, then Answering Defendants shall be entitled to common law indemnification from defendants Phillips & Millman LLP and Jeffrey T. Millman, Esq., for any and all amounts arising from said liability.

WHEREFORE, Defendants JOEL A. GROSSBARTH and TOGNINO & GROSSBARTH LLP respectfully prays for judgment as follows:

- a. Dismissing the complaint in its entirety, with prejudice;
- b. Awarding Joel A. Grossbarth and Tognino & Grossbarth, LLP the costs and disbursements of this action; and;
- c. Such other and further relief as this Court deems just, equitable and proper.

Dated: Woodbury, New York  
May 6, 2014

**KAUFMAN DOLOWICH & VOLUCK, LLP**

By: \_\_\_\_\_

Brett A. Scher, Esq.

*Attorneys for Defendants*

*Joel A. Grossbarth and Tognino & Grossbarth, LLP*

135 Crossways Park Drive, Suite 201

Woodbury, New York 11797

(516) 681-1100